

ASUC Judicial Council

Summary Judgment

*Navab v. Elections Council Chair Kariyawasam,
Ickowitz v. Elections Council Chair Kariyawasam*

On this date, the Third of May, Two Thousand and Twelve

By Associate Justice Abraham Escareno, with whom
Chair Erica Furer, and
Associate Justices Emrin Dhatt, Suneeta Israni, Scott Lara, and Hinh Tran join.

In the cases at hand, the Judicial Council is asked to consider whether or not having the Class Pass Referendum's text incorrectly listed on the elections ballot constitutes a violation that would invalidate it from this year's ballot. On April 13, 2012, Bahar Navab, representing the Graduate Assembly's Executive Board, and ASUC President Vishalli Loomba filed suit against the Elections Council Chair Pamudh Kariyawasam and Attorney General Deepti Rajendran requesting disqualification of the Class Pass Referendum. On April 19, 2012, Noah Ickowitz filed suit against the Elections Council Chair and Attorney General Rajendran. Both Navab and Ickowitz alleged that the text of the Class Pass Referendum appeared on the elections ballot incorrectly and thus should be disqualified from the ballot. Ickowitz also alleged that Defendants failed to perform due diligence prior to placing the Class Pass Referendum on the ballot, as he contends that, even in its final form, the Referendum was invalid. On April 24, 2012, the parties submitted to the Judicial Council a Plea Agreement in which Defendant Elections Council pled no contest to the alleged charges. As a result of the Plea Agreement, there exist no triable issues of material fact that merit a hearing. Accordingly, the Judicial Council issues a summary judgment invalidating the Class Pass Referendum.

Allegations Against Elections Council

Navab and Ickowitz alleged that, on April 10, 2012, the first day of elections, the Class Pass Referendum appeared on the ballot with incorrect language for over seven hours. During this period, the ballot stated that the fee the Class Pass Referendum mandates would be imposed for three years, as opposed to the seven years that was passed by the ASUC Senate. During the at least seven hours in which the language appeared incorrectly on the ballot, it is alleged that students voted on the referendum with the incorrect language. Both plaintiffs allege that the students who voted on the ballot with incorrect language effectively were barred from casting their vote on the actual referendum question and request that the Judicial Council invalidate the Class Pass Referendum.

Parameters of Plea Agreement Reached by Parties

On April 24, 2012, the parties provided to the Judicial Council a Plea Agreement to which all parties have agreed. In the Plea Agreement signed by all parties, the parties agree that, by appearing

on the elections ballot incorrectly for at least seven hours, the Class Pass Referendum violated three Bylaws and the Constitution.

First, Title IV § 14.4(2) provides that:

“Ballots shall begin with the Proposition Title and Proposition Question, as approved by the Attorney General.”

All parties agree that the Class Pass Referendum text violates this bylaw because the text that appeared on the ballot, that the student fee would be imposed for three years when it was intended to say seven years, was different from that which was approved by the Attorney General.

Second, Title IV § 4.2(3) provides that:

“The Voters’ Guide shall include party and candidate statements, the full text of all propositions and constitutional amendments, an explanation of the voting procedures, an explanation of how Preferential Proportional Representation works, and a description of the duties of the Senate and Executive Officers.”

All parties agree that the Voters’ Guide’s text violates this bylaw because the text was “incorrect, skewing the perception of voters and further contributing to mismanagement by the Attorney General as an ex-officio member of the Elections Council.”

Third, Title IV §9.3 provides that:

“Prior to adoption by the Senate or the Graduate Assembly, the Attorney General shall certify that the question is an impartial and accurate description of the proposal, and shall assign the Referendum an Official Name. If the Initiative is a Constitutional Amendment or creates a by-law, the Attorney General shall prepare an Official Summary of the Referendum. The Attorney General shall confer with the Chancellor or his/her designee for approval of language on questions of student fees.”

All parties agree that the Class Pass Referendum violated this bylaw because it was brought to the ballot on information that ASUC President Vishalli Loomba, Graduate Assembly President Bahar Navab, and Attorney General Deepti Rajendran now believes is “incorrect” and thus “did not provide full disclosure to students.” All parties agree that the Attorney General lacked complete information when allowing the Referendum to get on the ballot and “recognize this Referendum in its current form as invalid if used next year.”

Lastly, the Constitution’s Art. VI § 1(B) provides that:

“The Senate may initiate changes in student fees paid to the ASUC, subject to a referendum of the students of the University of California at Berkeley and approval by the Regents.”

All parties agree that the Class Pass Referendum violated this bylaw because the process of bringing forth a student fee via referendum was carried out incorrectly due to the text appearing on the ballot incorrectly.

Judicial Council Disqualifies Class Pass Referendum

Title IV, §17.4(3) empowers the Judicial Council to “void the election on the grounds that the mismanagement or the unpunished violation substantially affected the outcome of the election.” Pursuant to the Plea Agreement reached by Navab and the Elections Council Chair Kariyawasam, the Judicial Council finds that the Elections Council mismanaged the election procedure of the Class Pass referendum by committing the following four violations: 1) Bylaw Title IV § 14.4(2); 2) Bylaw Title IV § 4.2(3); 3) Bylaw Title IV §9.3; 4) Constitution Art. VI § 1(B). As a result of finding the four violations, the Judicial Council finds that there exists no issue of material fact as to any of the allegations brought forth by Navab and Ickowitz that merits a hearing. Accordingly, the Judicial Council, by finding that Defendant Elections Council committed four violations through its mismanagement of the elections procedure of the Class Pass Referendum, pursuant to this authority set forth in Bylaw Title IV § 17.4(3) and Judicial Rule of Procedure Article 3.6 § 2(5), issues a summary judgment disqualifying the Class Pass Referendum from the elections ballot.

Chair Erica Furer

Associate Justice Abraham Escareno

Associate Justice Emrin Dhatt

Associate Justice Suneeta Israni

Associate Justice Scott Lara

Associate Justice Hinh Tran